

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 64-019-16-1-5-00357-18
Petitioners: Nick A. and Nancy Geroulis
Respondent: Porter County Assessor
Parcel No.: 64-09-19-379-008.000-019
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Geroulises contested the 2016 assessment of their property located at 472 Scarborough Road in Valparaiso by filing a Form 130 petition with the Porter County Assessor. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property as follows:

2015: Land: \$123,600 Improvements: \$332,000 Total: \$455,600

2. The Geroulises timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On June 27, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a hearing on the Geroulis’s petition. Neither she nor the Board inspected the subject property.
3. Nick and Nancy Geroulis appeared pro se. The Assessor appeared by Terri Newhard and Peggy Hendron, his Deputy Assessors. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: Spreadsheet of comparable properties
Petitioner Exhibit 2: Photographic comparison of the subject property and 502 Wexford Road
 - b. Respondent Exhibit 1: Property record card (“PRC”) and aerial view for the subject property
Respondent Exhibit 2: Explanation of assessment criteria
Respondent Exhibit 3: Spreadsheet of comparable properties

Respondent Exhibit 4: Comparable breakdown with price per square foot
Respondent Exhibit 5: PRC and aerial view for 385 Wilshire Court
Respondent Exhibit 6: PRC and aerial view for 422 Scarborough Road
Respondent Exhibit 7: PRC and aerial view for 496 Wexford Road
Respondent Exhibit 8: PRC and aerial view for 474 Scarborough Road
Respondent Exhibit 9: PRC and aerial view for 176 Cheshire Court
Respondent Exhibit 10: PRC and aerial view for 478 Scarborough Road
Respondent Exhibit 11: PRC and aerial view for 210 Scarborough Court

- c. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) a digital recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Here, the ALJ preliminarily determined that the Geroulises had the burden of proof because their assessment did not increase more than 5% from 2015 to 2016. During the hearing, however, our ALJ realized that the Geroulises had successfully appealed their 2015 assessment and the 2016 assessment represented an increase over the prior year's assessment. Accordingly, our ALJ informed the parties that the burden of proof was on the Assessor. We agree that under these circumstances the Assessor bears the burden of proof.

SUMMARY OF CONTENTIONS

7. The Assessor's case:
- a. The subject is a lakefront property in the Shorewood Forest subdivision, which is a limited access neighborhood. The neighborhood has a pool, a clubhouse, and a beach. Having frontage on the lake is an important factor for people considering purchasing in the neighborhood. *Newhard testimony; Resp't Exs. 1, 2.*
- b. The Assessor selected nine potential comparable sales. All nine came from a ratio study of 2015 sales, but two of the sales were not comparable to the subject property because one was much bigger and one was much newer. The Assessor relied on the following seven properties, which are all lakefront homes constructed within ten years of the subject:

- Comparable No. 1 (385 Wilshire Court) sold for \$625,000 (\$116.95/SF) in August 2015.
- Comparable No. 2 (422 Scarborough Road) sold for \$415,000 (\$122.64/SF) in December 2015.
- Comparable No. 3 (496 Wexford Road) sold for \$470,000 (\$152.40/SF) in September 2015.
- Comparable No. 4 (474 Scarborough Road) sold for \$327,500 (\$101.61/SF) in March 2015.
- Comparable No. 5 (176 Cheshire Court) sold for \$450,000 (\$115.09/SF) in November 2015.
- Comparable No. 6 (478 Scarborough Road) sold for \$703,000 (\$140.15/SF) in September 2015.
- Comparable No. 7 (210 Scarborough Court) sold for \$500,000 (\$124.32/SF) in June 2015.

Newhard testimony; Resp't Exs. 3-11.

- c. The Assessor determined that differences between single story and two story homes, masonry versus prefabricated fireplaces, and bedrooms counts of three or four required no adjustments. They did consider making adjustments for differences in lot size, lake frontage, grade, size, basement, bathroom count, additional fixtures or specialty plumbing, exterior features, garage size, and number of fireplaces. The Assessor ultimately rated Comparable Sale Nos. 1 and 6 as superior to the subject property and found the remaining five comparable sales to be inferior. *Newhard testimony; Resp't Exs. 2-4.*
- d. The median sale price of the Assessor's comparable sales is \$122.64/SF and the mean price is \$124.74/SF. The Geroulis's original property assessment for 2016 was \$111.82/SF. Following a Form 133 correction, their 2016 assessment changed to \$107.68/SF, which is far below the average price per square foot for the area. *Newhard testimony; Resp't Exs. 1, 4.*
- e. The Assessor criticized the Geroulis's evidentiary presentation, arguing that Indiana is a market-based state and they presented assessments instead of sales. Additionally, in response to Mr. Geroulis's discussion of the property taxes associated with a property located at 502 Wexford Road, the Assessor asserted it is improper to compare tax bills because exemptions and deductions might apply. *Newhard testimony.*

8. The Geroulis's case:

- a. The Geroulises contend their property is over-assessed when compared to other properties in the Shorewood Forest subdivision. They submitted data for 17 comparable lakefront properties in Shorewood Forest that have significantly lower

- assessed values, and calculated the average assessments for the above grade areas, finished areas, and total areas. The comparable properties above grade areas averaged \$149/SF versus their home's \$187/SF, the finished areas averaged \$102/SF versus their home's \$108/SF, and the total area values averaged \$90/SF versus their home's \$94/SF. Using these averages would result in an assessment of \$410,454 for their home. *Nancy Geroulis testimony; Pet'r Ex. 1.*
- b. Because the Geroulis's home is a ranch, they also calculated separate average assessments using only the five ranch-style homes. Those averages were \$179/SF for the above grade area, \$100/SF for the finished area, and \$90/SF for the total area. Using the averages from the five ranch-style homes results in an assessed value of \$431,943, which is the assessment they are requesting. *Nancy Geroulis testimony; Pet'r Ex. 1.*
- c. An employee of Porter County gave the Geroulises an example of a comparable property. That property, 502 Wexford Road, has 537 square feet more than their home and a larger lot. In addition, the Wexford Road property is newer and has a more modern and marketable layout. The kitchen is large and updated with granite countertops and an island, whereas their kitchen is narrow and has laminate countertops. The Wexford Road property has modern high quality bathrooms while their home's bathrooms are older. It also has a more modern basement and a spacious porch. According to real estate agents the Geroulises spoke to, the Wexford Road property's market value is higher than their property's and yet it has a lower assessment. *Nancy Geroulis testimony; Pet'r Exs. 1, 2.*
- d. After the Geroulises had the subject property's assessment reduced following their successful 2015 appeal, the Wexford Road property's taxes were \$13,000 to \$15,000 higher than theirs were. Now the difference in taxes is down to \$4,500 despite the Wexford Road property being more valuable than their property. The Geroulises contend it is important to get the best tax assessment because it determines their taxes. *Nick Geroulis testimony.*

ANALYSIS

9. The Assessor failed to make a prima facie case supporting the subject property's 2016 assessment, and the Geroulises failed to make a prima facie case for a reduction below its 2015 assessed value. Accordingly, we order the subject property's 2016 assessment reduced to its 2015 assessed value of \$448,300. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance

- (“DLGF”). I.C. § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are appropriate for determining true tax value. MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal standards. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice (“USPAP”) is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how their evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2016 assessment was January 1, 2016. I.C. § 6-1.1-4-4.5(f).
- c. As discussed above, the Assessor had the burden of proving that the subject property’s 2016 assessment is correct. The Assessor offered evidence regarding the sales of seven purportedly comparable properties. In doing so, the Assessor essentially relied on a sales comparison approach. The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2.
- d. To effectively use the sales comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” do not suffice. Instead, the proponent must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. The proponent must similarly explain how relevant differences affect their values. *Id.*
- e. Here, the Assessor did little to show that his seven purportedly comparable sales are comparable to the subject property, other than to state they are all lakefront homes. Although their location on the lake is certainly an important factor, the Assessor’s secondary reason, that they were constructed within ten years of the subject, does not demonstrate comparability. That is particularly true because the Assessor did not explain why his sales comparison grid lists multiple year built dates for three of the seven sales, which leaves us questioning whether they underwent renovations or other changes that might affect their comparability.
- f. The Assessor’s sales comparison grid and his accompanying “comparable breakdown” documents many other relevant characteristics. But in discussing their comparability to the subject, the Assessor simply listed the characteristics he found to be similar without explanation. While making a comparison of the number of

bedrooms or bathrooms may not require any additional explanation, characteristics such as grade and construction quality do. Thus, we conclude that the Assessor failed to provide sufficient information to demonstrate comparability.

- g. Even if we accepted the Assessor's seven sales as sufficiently comparable, his adjustment process failed to establish how the differences between the subject property and his sales affect their relative market values-in-use. The Assessor noted differences between the properties and rated them as either inferior or superior to the subject property, but he failed to explain any of the reasoning supporting those opinions. Again, some of the differences are apparent and require little justification, but others like construction quality need a detailed explanation to be reliable.
- h. The Assessor also failed to explain how he reconciled his qualitative adjustments. It appears he may have simply offset superior and inferior adjustments, as he provided no indication of the importance placed on any specific item of comparison. That matters because different characteristics generally have different effects on value. Furthermore, appraisers typically resort to a qualitative analysis only for differences between the subject and comparable properties for which they cannot quantify the effect on value. In this case, however, there is no indication that the Assessor even contemplated performing a quantitative analysis.
- i. Additionally, the Assessor did not use his sales comparison approach to produce a suggested value. Instead, he simply calculated a median and mean price per square foot from the unadjusted prices of his seven sales. The Assessor claimed that the average he computed supports the subject property's current assessment because it is higher than that assessment despite the fact that most of his sales are inferior to the subject property. While the Assessor's sales did produce a higher average price per square foot than the subject's current assessment, he failed to demonstrate that this method conforms to generally accepted appraisal principles.
- j. Given the significant problems discussed above, the Assessor's sales comparison approach is insufficiently reliable to be probative evidence of the subject property's market value-in-use. Because the Assessor did not offer any other probative valuation evidence, he failed to make a prima facie case that the subject property's current assessment is correct. The Geroulises are therefore entitled to have their 2016 assessment reduced to its 2015 value of \$448,300.
- k. That does not end our review, however, because the Geroulises sought a lower valuation. They presented an assessment comparison approach relying on a number of purportedly comparable properties from their subdivision in an attempt to show that their property's assessment is incorrect. Taxpayers may introduce this type of evidence to prove market value-in-use in residential property assessment appeals as long as the "comparable properties [are] located in the same taxing district or within two (2) miles of a boundary of the taxing district." Ind. Code § 6-1.1-15-18(c)(1).

- l. The Geroulises offered assessment data for 17 lakefront homes in their neighborhood. But a party offering assessment data must also show the properties are comparable using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15- 18(c); *see also Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). As with the sales comparison approach, the proponent must establish the comparability of the properties examined and explain how any differences affect their values.
- m. The excel spreadsheet prepared by the Geroulises lists some of the parcel information for the 17 purportedly comparable properties such as their style, square footage, bedroom and bathroom counts, year built and lot sizes. However, with one exception, they failed to offer any meaningful testimony relating the properties' specific features and characteristics to the subject property. The Geroulises did offer an exhibit and detailed testimony comparing various characteristics of 502 Wexford Road to their home, but they ultimately excluded it when developing their proposed assessment because it is a 2-story home. And the Geroulises failed to make adjustments for any relevant differences between their property and the comparable properties. Their presentation therefore fell well short of providing the analysis contemplated by *Indianapolis Racquet Club*.
- n. Because the Geroulises offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, they failed to make a prima facie case for a further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the Geroulis's 2016 assessment reduced to \$448,300.

ISSUED: September 6, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.